BOWIE STATE UNIVERSITY	*	**IN THE**
Petitioner,	*	**CIRCUIT COURT**
v.	*	**FOR**
MARYLAND CLASSIFIED EMPLOYEES ASSOCIATION, INC.	*	**BALTIMORE CITY**
Respondent.	*	**Case Number: 24-C-02-006286**

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MEMORANDUM OPINION AND ORDER

Heller, J.

Introduction

This is an appeal by Bowie State University ("Petitioner" or "Bowie") from a decision of the State Higher Education Labor Relations Board ("SHELRB" or "the Board"), which held that Sergeant Djkarta Hall ("Mr. Hall") was not a "supervisor" as defined for purposes of collective bargaining by Maryland Code Annotated, State Personnel and Pension, section 3-102 (1992 & Supp. 2002), and the University of Maryland's Definitions for Managerial, Supervisory, or Confidential Employees adopted by the Board of Regents. The Board further held that because Mr. Hall does not hold a supervisory position, he cannot be excluded from the bargaining unit of sworn police officers at Bowie State University.

Statement of the Case

On July 9, 2002 Maryland Classified Employees Association, Inc.("MCEA") filed a Petition to Contest Exclusionary Designation with the SHELRB on behalf of Mr. Hall. R. at D. In MCEA's petition, MCEA contested Bowie State University's designation of a

UPO IV position as supervisory and excluded Mr. Hall from the bargaining team. Id. On July 26, 2002, SHELRB Executive Director found that the University did not establish that Mr. Hall was a supervisor and therefore he was eligible to participate in the collective bargaining process. R. at G. Bowie State University appealed this decision to SHELRB.

A hearing occurred on September 26, 2002 and on October 7, 2002 SHELRB issued a decision affirming the decision of the Executive Director, finding that Mr. Hall's duties and responsibilities were non-supervisory and that there was "insufficient evidence to support [his] exclusion . . . from Bowie State's unit of sworn police officers." R. at Q.

Petitioner filed a timely notice of judicial review with in the Circuit Court for Baltimore City on November 6, 2002. Due to a technical problem with the audio tape, there is no transcript of any part of the SHELRB hearing. R. at R. Oral argument occurred on April 23, 2002 before this Court.

Factual Background

On December 5, 2001, Bowie State University conducted an election to determine whether University police officers would be represented for collective bargaining purposes and who would be their representative. R. at A. MCEA was elected to serve as the collective bargaining representative for the sworn police officers. Id. MCEA selected Mr. Hall as a member of its negotiating team and was in the process of developing a Memorandum of Understanding with the University. R. at B. At the time of the election, Mr. Hall was a University Police Officer III ("UPO III"), which the parties agree is a non-supervisory, non-managerial, and non-confidential position.

Therefore, he could participate in the election process. R. at E. On January 23, 2002 (after he was a member of the negotiating team), Mr. Hall was promoted to Sergeant as a University Police Officer IV ("UPO IV"). Id. Bowie contends that UPO IV is a supervisory position that precludes Mr. Hall from participating in the collective bargaining process. On or about June 11, 2002, MCEA was notified by Rocquelle A. Jeri, Esquire ("Ms. Jeri"), Chief Negotiator for the University, that Mr. Hall was to be excluded from the collective bargaining process because he held a supervisory position. R. at E.

In his signed affidavit of June 19, 2002, Mr. Hall contends he is not a supervisor within the definition adopted by the Board of Regents. R. at A. That affidavit further states that "[a]ll decisions with regard to hiring or disciplining employees, and/or any other personnel matter, must be taken to Patrol Division Supervisor (UPO V) for disposition." Id. Although he is the "lead worker" and the "highest ranking officer" on his shift, Mr. Hall explains has no independent authority to take action or recommend action against employees. Id. Mr. Hall notes that his position description states that he is to "relay orders to subordinates and pass information up to the chain-of-command to their superiors." Id. (internal quotation marks omitted). Although Mr. Hall assists in evaluating employees on his shift, these evaluations are not final and must be reviewed and approved by the UPO V. Id.

In an affidavit by the Senior Director of Human Resources for Bowie State University, Sheila Hobson ("Ms. Hobson") of June 20, 2002, she states that Mr. Hall's position is supervisory because he is "responsible for the supervision of other employees." R. at H. Chief Roderick Pullen ("Chief Pullen") for Bowie State University

wrote a memorandum to Ms. Jeri after reviewing both Mr. Hall's and Ms. Hobson's affidavits in order to clarify Ms. Hobson's assessment of Mr. Hall's duties. Id. Chief Pullen's memorandum states that Sergeants (UPO IVs) can "suspend or recall personnel in certain situations and without prior approval of their supervisor." Id. Chief Pullen also indicates in his memorandum that persons in Mr. Hall's position can discipline subordinates by way of verbal reprimand and by way recommending termination. Id. He contends that UPO IVs can recommend that a contract not be renewed for a Contingent I employee, suspend Contingent I employees, send Contingent I employees home, and deny pay to Contingent I employees, "one of the most severe forms of disciplinary action." Id. Chief Pullen's memorandum states that UPO IVs perform duties as directed by the Chief of Police, approve leave, schedule vacation and training, and issue letters of commendations directly to subordinate officers. Id.

Questions Presented

A. Does the lack of a transcript of the SHELRB hearing constitutes sufficient mistake or irregularity to warrant a rehearing in this matter?

B. Did the Board err, as a matter of law, when it determined that Mr. Hall's position was non-supervisory pursuant to the definitions adopted by the Board of Regents in accordance with Maryland Code Annotated, State Personnel and Pensions, section 3-102 (b)(12) (1997 and Supp. 2002)?

Standard of Review

Judicial review of an administrative agency decision is narrow. The court's job is not to substitute its judgment for the expertise of the agency, but is limited to determining if there is substantive evidence in the record as a whole to support findings and conclusions, and to determine if the decision is premised on error of law. See United Parcel Serv. Inc. v. People's Counsel, 336 Md. 569, 576-77 (1994). Thus, a review of the decision of an administrative agency is generally limited to a determination of (1) whether the correct principles of law were applied; and (2) the facts are supported by substantial evidence. See Dept. of Econ. & Employment Development v. Propper, 108 Md. App. 595, 603-04 (1996).

The review of an agency's finding of fact is deferential, and the "substantial evidence" standard has been construed to mean that a reviewing court "must uphold an agency's determination if it is rationally supported by the evidence in the record, even if the reviewing court, left to its own judgment, might have reached a different result." Travers v. Baltimore Police Dept., 115 Md. App. 395, 419 (1997). In other words, the substantial evidence standard, which governs an agency's finding of fact, "is limited to determining whether a reasoning mind could have reached the factual conclusion reached by the agency." Liberty Nursing Ctr., Inc. v. Dept. of Health and Mental Hygiene, 330 Md. 433, 443 (1993). A reviewing court may not substitute its own judgment for the expertise of the agency, nor may it engage in its own fact finding. Id.

On the other hand, a reviewing court may substitute its judgment on the law if the agency has not applied the correct principles of law or the factual findings, supported by

substantial evidence, "are susceptible of but one legal conclusion, and the agency does not so conclude." Travers, 115 Md. App. at 420.

Although there is no Maryland law on the issue of who was a supervisor, it has been addressed by Federal Courts and the National Labor Relations Board ("NLRB"). When reviewing National Labor Relations Board decisions concerning whether an employee is a supervisor within the meaning of the National Labor Relations Act, almost all of the U.S. Courts of Appeals have asserted that the Board's determinations of supervisory status are entitled to deference and given special weight.[1] See Beverly Enterprises, Inc.- Minnesota, Inc.v. NLRB, 266 F.3d 785, 788 (remarking that the Board has "broad authority to construe provisions of the Act" as long as the Board's order is the correct application of the law (citing NLRB v. Young Woman's Christian Assoc. of Metropolitan St. Louis, 192 F. 3d 1111,1116 (8th Cir. 1999)); Entergy Gulf States, Inc. v. NLRB, 253 F.3d 203, 208 (5th Cir. 2001) (noting that "courts normally extend particular deference to NLRB determinations that a position is supervisory (citations omitted)); Brusco Tug & Barge Co. v. NLRB, 247 F.3d 273, 276 (D.C. Cir. 2001) (stating that "[b]ecause of its expertise, the Board necessarily has a large measure of informed discretion in determining whether a worker is a supervisor" (citations omitted) (internal quotation marks omitted)); Edward Street Daycare Center, Inc. v. NLRB, 189 F.3d 40, 46 (1st Cir. 1999) (noting that because the determination of whether an employee is a supervisor has policy implications, courts "must afford great deference to the Board's

[1] The Eleventh Circuit has held that the standard of review of a Board's determination should be "robust" and that the "Board must show that its determinations are based on substantial evidence." Cooper T. Smith, 177 F. 3d at 1262. The Sixth Circuit also did not clearly state that it accorded the NLRA deference in its determinations of supervisory status. See Beverly Health and Rehabilitation Services, Inc., 1999 U.S. App. LEXIS at 7-8. It does, however, apply the substantial evidence standard. Id.

expert determination of which workers fall into which classification." (citations omitted) (internal quotation marks omitted)); NLRB v. Audobon Health Care Center, 170 F.3d 662, 666 (7th Cir. 1999) (applying a deferential standard of review to the Board's determination of supervisory status (citations omitted)); Beverly Enterprises, Inc.-Virginia v. NLRB, 165 F.3d 290, 296 (4th Cir. 1999) (stating that the Board's application of the National Labor Relations Act is entitled to deference, but noting that the Board's interpretation of the law must be rational and consistent with the Act (citations omitted)); Passavant Retirement & Health Center v. NLRB, 149 F.3d 243, 246 (3d Cir. 1998) (stating that "because of the Board's special competence in the field of labor relations, its interpretation of the Act is accorded special deference (citations omitted (internal quotation marks omitted)); Providence Alaska Medical Center v. NLRB, 121 F. 3d 548, 551 (9th Cir. 1997) (stating that the Ninth Circuit strongly defers to the Board's interpretation and application of the NLRA when it makes determinations on an employee' supervisory status because "the Board has expertise in making the subtle and complex distinctions between supervisors and employees" (citations omitted) (internal quotation marks omitted)); NLRB v. Dixon Industries, Inc., 700 F. 2d 595, 598 (10th Cir. 1983) (remarking that "[t]he Board's determination of supervisory status is entitled to weight by the judiciary since the gradations of authority responsibly to direct the work of others are so finite and subtle that of necessity a large measure of informed discretion is involved in the exercise by the Board of its primary function" (citations omitted) (internal quotation marks omitted)); NLRB v. Monroe Tube Co., 545 F.2d 1320, 1325 (2d Cir. 1976) (recognizing that "the Board's findings of whether [an employee is a supervisor within the meaning of the National Labor Relations Act] are entitled to special weight

since it possesses expertise in evaluating actual power distributions which exist within an enterprise needs for drawing lines between managerial personnel and the rank and file" (citations omitted) (internal quotation marks omitted)). All U.S. Court of Appeals have held that the Board's findings must be supported by substantial evidence."[2] See Beverly Enterprises, Inc.-Minnesota, 266 F. 3d at 788; Entergy Gulf States, Inc., 253 F.3d at 208; Mt. Sinai Hospital, 8 Fed. Appx. at 113; Brusco Tug & Barge, 247 F.3d at 276; Edward Street Daycare Center, Inc., 189 F.3d at 46; Cooper T. Smith, Inc., 177 F.3d at 1262; Beverly Health & Rehabilitation Services, Inc., 1999 U.S. App. LEXIS at 7-8; see also Audobon Health Care Center, 170 F. 3d at 673; Passavant Retirement & Health Center, 149 F. 3d at 246; Glenmark Associates, Inc. v. NLRB, 147 F.3d 333, 338 (4th Cir. 1998); Providence Alaska Medical Center, 121 F.3d at 551; see also Dixon Industries, 700 F.2d at 598.

In addition to applying a deferential standard of review regarding NLRB determinations on supervisory status, Federal Courts have also articulated that the party asserting supervisory status bears the burden of proof. Mt. Sinai Hospital, 8 Fed. Appx. at 113; Brusco Tug & Barge Co., 247 F.3d at 275; Edward Street Daycare Center, Inc., 189 F.3d at 46; Cooper T. Smith, 177 F.3d at 1262; but see Beverly Health &

[2] The Second Circuit has also employed a "more probing" standard of review to analyze the Board's findings regarding supervisory status, but in later cases, regarded the distinguishing of the two reviews as "semantic." Compare NLRB v. Mt. Sinai Hospital, 8 Fed. Appx 111, 113 (2d Cir. 2001) (finding it unnecessary to employ to "more probing" standard of review and engaging in the substantial evidence standard of review) with Meenan Oil Co., 139 F.3d at 321 (applying the more probing standard of review).

Rehabilitation Services, 1999 U.S. App. LEXIS at 8 (stating that "the Board bears the burden of proving that employees are not supervisors.")

Discussion

Lack of a Hearing Transcript Does Not Warrant a Rehearing

This Court concludes that Bowie is not entitled to a rehearing despite the lack of the transcription of the September 26, 2002 SHELRB hearing. Maryland Rule 7-206 (a) states that "[t]he record shall include the transcript of the testimony and all exhibits and other papers filed in the agency proceeding, except those papers the parties agree or the court directs may be omitted by written stipulation or order included in the record." In Bradley v. Hazard Technology Co., 340 Md. 202, 204 (1995), the Court held that "the unavailability of a full trial transcript does not automatically entitle a party to a new trial, but that retrial may be appropriate if the appellant can demonstrate that the missing portion of the transcript is relevant to consideration of a specific allegation of error, and that no sufficient substitute for the missing transcript can be reconstructed." Bradley v. Hazard Technology Co., 340 Md. 202, 204 (1995). The Bradley Court found that when a transcript is unavailable because of mistake or irregularity, the appellant is required to specifically allege what errors occurred in the lower court in his memorandum to the court:

> [I]f all or part of the trial transcript is missing, an appellant should be required to demonstrate to the circuit court that this missing portion is relevant to the appellate issues raised in the appeal memorandum. If the circuit court determines that the lost portion of the record is material to the appellate issues, the appellant must make diligent efforts to reconstruct the missing portions of the record through use of affidavits and stipulations with the opposing party. If the circuit court finds that a record

> sufficient for a fair consideration of the appellate issues can be reconstructed, the appeal should proceed on that record.

Id. at 211.

Bowie contends that it is entitled to a rehearing because the testimonies of Ms. Hobson, Mr. Hall, and Chief Pullen are "highly relevant" to the appeal, and the absence of the trial transcript unfairly prejudices Petitioner because it is unable to review the actual testimony of these individuals. Bowie argues that the parties should not be expected to stipulate to the testimony of Ms. Hobson, Mr. Hall, and Chief Pullen. In support of its request for a rehearing, Bowie cites to the Code of Maryland Regulations, title 14, section 30 (2003), providing that "[i]n the event of fraud, mistake, or irregularity, a final decision may be reconsidered and corrected at any time." Md. Regs. Code tit. 14, § 30 (2003). However, Bradley specifically stated that the parties *must* attempt to reconstruct the record by way of stipulation, and if the court determines that these supplements to the record provide adequate information for the court to "justly" consider those issues on appeal, then the appeal will indeed go forward. This record includes signed affidavits of Ms. Hobson, Mr. Hall, and Chief Pullen (individuals whose testimonies were deemed "highly relevant" by Petitioner) and provides this Court with a sufficient understanding of each person's view on the supervisory status of Mr. Hall's position at Bowie State University to make a fair consideration of all issues on appeal. Petitioner is not entitled to a rehearing due to a lack of a transcribed record.

The Board Did Not Err, as a Matter of Law, When It Determined that Mr. Hall's Position Was Non-Supervisory

Upon careful review of the record, this Court also finds that SHELRB did not err when it determined that Mr. Hall's UPO IV position was not supervisory in status, and Mr. Hall may, therefore, participate in the collective bargaining process. Title 3 of Maryland Code Annotated, State Personnel and Pensions extends to select USM employees the right to elect and be represented by employee organizations and to participate in the collective bargaining process with the University over employment conditions (i.e.; wages, hours). See Md. State Pers & Pens. Code Ann. § 3-101 et seq. (1997 and Supp. 2002). Sworn University police officers are employees who may engage in collective bargaining with the University. See § 3-102. Employees who are deemed to be a "supervisory, managerial, or confidential employee" are excluded from engaging in collective bargaining. § 3-102 (b)(12). The statute provides that supervisory, managerial, or confidential employee is "defined in regulation adopted by the governing board of the institution." Id. The Board of Regents, Bowie State University's governing board, adopted the following definition for supervisor:

> A supervisory employee is an employee who has the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or to adjust their grievances, or effectively recommend such action, if, in connection with the foregoing, the exercise of such authority is not merely routine or clerical in nature by requires the use of independent judgment.[3]

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[3] The Board of Regents modeled its definition after section 2(11) of the National Labor Relations Act, 29 U.S.C. § 152 (11), which defines supervisor as:

> any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Section 2(11).

Record ("R.") at E.

Three questions must be answered in the affirmative in order to consider an employee a supervisor under [§ 152(11)]: First, "does the employee have the authority to exercise at one of the twelve listed activities?; does the exercise of that authority require 'the use of independent judgment'?; and does the employee hold the authority 'in the interest of the employer'?"[4] NLRB v. Health Care & Retirement Corp, 511 U.S. 571, 573-74. (1994).

The Board found that, based on the testimony of Mr. Hall, Chief Pullen and documentary evidence provided by Bowie State University concerning Mr. Hall's authority with respect to "ensuring" the "proper performance" of other officers on his shift, hiring, and disciplining lower ranking officers, Mr. Hall's position was not supervisory within the meaning of the Collective Bargaining Statute. R. at Q. "[T]he authority to evaluate or direct the work performance of junior co-workers does not establish or constitute any of the prescribed criteria establishing supervisory status." Id. The Board also concluded that the duties associated with Mr. Hall's position involved no independent judgment. Id. Specifically, it noted that the testimony regarding Mr. Hall's role as a member of a hiring rating panel did not reflect any authority to actually select which applicant was to be hired. Id. The Board further observed that Mr. Hall's authority in regard to disciplining lower raking officers is limited to "directing compliance" and drafting incident reports and "do[es] not reflect independent disciplinary

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[4] The third question requiring that an employee exercise power "in the interest of the employer" reflects language in § 152(11), which is not included in the definition adopted by the Board of Regents. Thus, it is not necessary to address the third question.

discretion." Id. Lastly, the Board cited to Winco Petroleum Co., 241 NLRB 1118, 1121-22 (1979), stating that "giving [an employee] the title of 'supervisor,' or even the theoretical power to perform one or more enumerated supervisory functions, did not make a statutory supervisor out of a rank-and-file employee." Id.; see also Winco Petroleum Co., 241 NLRB at 1121-22.

This Court concludes that there is substantial evidence in the record to uphold the Board's finding. There is no evidence that Mr. Hall has the authority to transfer, lay off, or promote employees, or effectively recommend such action. Nor is there evidence to support a conclusion that Mr. Hall has the authority to use independent judgment to hire, suspend, recall, discharge, assign, reward, or discipline or effectively recommend these actions.

The Board noted that although Mr. Hall does participate as a member on a rating panel for prospective applicants to be hired, he does not have the authority to hire any of the applicants, and in fact, *all* employees are asked to assess an applicant's qualifications. R. at Q. Furthermore, Mr. Hall stated in his affidavit that all decisions for hiring must be taken to the Patrol Division Supervisor for supervision. R. at A. Especially because all employees are asked to participate in the evaluation of applicants, and it is not a duty especially assigned to a UPO IV, this Court finds that Mr. Hall's participation does not rise to the level of supervisor within the meaning of the definition.

Although the testimony of Mr. Hall, Ms. Hobson, and Chief Pullen reveal that Mr. Hall does relay orders, supervise employees, approve leave, and schedule vacations in order for Mr. Hall to be considered a supervisor, he must not only have this authority but also exercise the "use of independent judgment which goes beyond the routine and

clerical" to be deemed a supervisor. See Maccarone Plumbing & Heating, 2001 NLRB Lexis at 11-12 (finding that assigning employees to their respective divisions in their jobs and distributing work to employees based on incoming service calls does not involve the use of independent judgment). "Independent judgment" is that judgment which involves decision-making that is not merely routine and clerical in nature. Louis Maccarone Plumbing & Heating, 2001 NLRB Lexis 999 (2001) (noting that "in order to be found to be statutory supervisors, the individuals must not only have the authority to assign work, but the exercise of that assignment must involve the use of independent judgment which goes beyond the routine and clerical" (citations omitted) (internal quotation marks omitted)); Somerset Welding & Steel, Inc., 291 NLRB 913 (1988) (stating that "[i]t is well established that the possession of any one of the indicia of supervisory authority specified in Section 2(11) [of the National Labor Relations Act, 29 U.S.C. § 152 (11)] is sufficient to confer supervisory status on an employee, provided that authority is exercised with independent judgment on behalf of management and not in a routine or sporadic manner" (citations omitted)).

This Court finds that the responsibilities of Mr. Hall to assign and direct work to other employees involve little to no independent judgment and are merely routine in nature. Mr. Hall stated in his affidavit that on his shift his role is limited to relaying orders and reporting information to his superiors. R. at A. The Board also cited to testimony stating that Mr. Hall ensured proper performance of duties on his shift. R. at Q. These duties are not demonstrative of duties that require independent judgment. See Byers Engineering Corp, 324 NLRB 740, 741 (holding that "[an employee's] role in training other [employees], altering their assignments in order to equalize the workload,

monitoring employee performance, and serving as a center for communication . . . does not involve the use of independent judgment, but rather involved routine decisions typical of leadman positions and other minor supervisory employees that are found by the Board not to be supervisory employees" (citations omitted)). Also, there is little specific evidence relating to the approval of leave and scheduling of vacation for this Court to make a determination that these are duties that require the exercise of independent judgment. Furthermore, the Mr. Hall stated that he is the highest-ranking officer on his shift; thus, the evidence seems to reflect that Mr. Hall's responsibilities to direct the work of lower-ranking officials and assign work to employees are also based on his promotion and seniority as a UPO IV. See Somerset Welding & Steel, 291 NLRB at 914 (finding that leadmen are not exercising independent judgment if "[they] direct employees in a routine manner and the responsibility to direct the work was given to them based on their higher level of skill and greater seniority"). The testimony of Chief Pullen also revealed that any additional responsibilities in which Mr. Hall may engage are "duties as directed by the Chief of Police." R. at H.

The record indicates that although Mr. Hall can suspend or recall personnel in *certain* situations without prior approval from his supervisor, this occasional exercise of supervisory authority does not elevate Mr. Hall's position to a supervisory status. See R. at H; see also Somerset Welding & Steel, 291 NLRB 913 (finding that "the exercise of some supervisory authority in a merely routine, clerical, perfunctory, or s*poradic* manner does not confer supervisory status on an employee (emphasis added) (citations omitted) (internal quotation marks omitted)).

There is also no evidence stating that Mr. Hall has the authority to discharge any employee. Chief Pullen stated in his memorandum that Mr. Hall does have the authority to send a person home for a day and revoke pay for a day. R. at H. However, Mr. Hall indicated in his affidavit that he does not possess any independent authority to take personnel action against employees. R. at A. Thus, where the evidence is inconclusive, Courts will not find that individual to be a supervisor on the basis of that evidence. North Shore Weeklies, Inc., 317 NLRB 1128,1129 (1995) (citing Phelps Community Medical Center, 295 NLRB 486, 490 (1989)).

In so far as rewarding employees, the only evidence in the record indicating that Mr. Hall has this ability is Chief Pullen's statement that Mr. Hall can issues letters of commendation to his subordinates. But, there is no evidence that this letter of commendation would result in a wage increase for that employee, promotion or any other indicia that Mr. Hall's position is supervisory. See North Shore Weeklies, Inc., 317 NLRB at 1129 (finding that supervisory status is not established when evaluations have no or a speculative effect on job status or wage increases).

In terms of disciplining employees, Mr. Hall contends that he does not have the authority to discipline. R. at A. He notes that his role in disciplining employees is restricted to reporting infractions and misconduct. Id. Chief Pullen stated that Mr. Hall may discipline an employee and recommend discipline that would result in anything ranging from a verbal reprimand to a recommendation for termination. R. at H. However, the Board found that although Mr. Hall's reports may be relied upon by superiors, "these reports do not reflect independent disciplinary action." R. at Q. This Court finds that there is substantial evidence in the record to uphold the Board's finding

and supervisory status cannot be based on Mr. Hall's limited role in disciplining lower ranking officers.

Finally, there is no evidence that Mr. Hall has the ability to adjust grievances of employees so as to establish him a supervisor. In a letter to Chief Pullen, Mr. Hall reports an incident when an officer wanted his hours changed. R at N. Mr. Hall denied the request because he "did not know where the order [to work the determined hours] originated so [he] was not going to change or alter it." Id. Mr. Hall advised the officer if he had an issue with his hours, he could follow the "chain of command." Id. Mr. Hall then called his superior to discuss the incident and wrote a report to Chief Pullen detailing the conversation. Id. Certainly, these actions belie any indication that Mr. Hall was exercising independent judgment in this instance so as to confer supervisory status on him.

In conclusion, this Court finds there is substantial evidence to support the Board's determination that Mr. Hall was not a supervisor within the meaning of the definition adopted by the Board of Regents and the Collective Bargaining statute and that he should not be excluded from the bargaining unit of sworn police officers.

BOWIE STATE UNIVERSITY	*	**IN THE**
Petitioner,	*	**CIRCUIT COURT**
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Respondent.	*	**Case Number: 24-C-02-006286**

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ORDER

For the foregoing reasons in the accompanying Memorandum and Opinion, it is this 24 day of June, 2003 HEREBY ORDERED that the decision of the Board of Appeals is AFFIRMED.

Court costs to be paid by Plaintiff.

ELLEN M. HELLER

JUDGE

Judge's signature appears on the original document.

CC: Erica M. Lell, Assistant Executive Director
Ms. Lisa O'Mara, Esq.
Ms. Sara Slaff, Esq.
Court file